

83-127-I

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CONCORD, NEW HAMPSHIRE 03301-6397

October 5, 1983

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Mr. Delbert F. Downing  
Chairman  
Wetlands Board  
Pleasant Street  
Concord, New Hampshire 03301

Re: M-946 Murray, Daniel

Dear Mr. Downing:

By memorandum dated July 6, 1983, you have inquired as to whether granting one dock permit in a subdivision would set a precedent which the Board must follow in granting later applications from subdivision lot owners. After reviewing RSA ch. 483-A and the Wetlands Regulations, it is my conclusion that the Board may reasonably refuse to permit the construction of a dock by a subdivision lot owner where it has previously permitted the construction of a dock by other lot owners in the same subdivision. RSA 483-A:4-a, III requires that decisions of the Board be consistent with the purposes set forth in RSA 483-A:1-b, and that no permit to dredge and fill be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners. The purposes set forth in RSA 483-A:1-b include the protection and preservation of wetlands from unregulated alteration which would, among other things, depreciate or obstruct the commerce, recreation and enjoyment of the public, or "otherwise adversely affect the interests of the general public."

Consequently, if, for example, the Wetlands Board were to find that the construction of a particular dock would obstruct the public's safe use and enjoyment of the lake, the Board could properly deny an application to construct such a dock for this reason, regardless of whether or not other docks nearby had been approved by the Board.

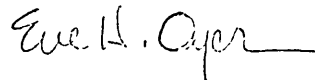


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This would be the case even where the Board previously approved the construction of other docks by lot owners in the same subdivision. It is reasonable to expect that several docks in a limited area would create safety risks, where one or two docks would not. Therefore, the Board would not be bound by any precedent as a result of having previously granted a dock construction permit to one or more lot owners in a subdivision.

For these reasons, the Board may properly deny an application to construct a dock on one lot of a subdivision where it has previously granted such applications relative to other lots in the same subdivision. Please do not hesitate to call if you have any further questions regarding this matter.

Yours truly,



Eve H. Oyer  
Assistant Attorney General  
Environmental Protection Division

EHO/clp

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